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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. NO. 984 /2003

PETITIONER : Smt. Triveni Devi
W/o Rewa Ram Patel
Aged about 45 years,
Sarpanch, Gram Panchayat 'Darramuda',
Block-'Pussour',Tahsil/Distt.Raigarh (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through : Collector, Raigarh (C.G.)

2. Collector, Raigarh
District Raigarh (C.G.)

3. Sub-Divisional Officer (Rev),
Raigarh, District Raigarh (C.G.)

4. Murlidhar S/o Ramlal,
Up-sarpanch, Gram Panchayat
Darramuda, Block-Pussour,
Tahsil/Distt. Raigarh (C.G.)

P.R. No. 578/03
Presented by Shri M.K. Nande
dated 20.02.03

शपथ आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
18/02/13
बिलासपुर तहसील कोर्ट

20/2/13

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTIONS OF INDIA

1. **PARTICULARS OF THE PETITIONER**

As given in the cause title above.

2. **PARTICULARS OF THE RESPONDENTS**

As given in the cause title above.

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आदेश पत्रक

मामला क्रमांक W.P. 984/ सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20.8.2004 Shri K.N. Nande, counsel for the petitioner. Shri Sanjay S. Agrawal, Government Advocate for the State/ respondents No.1 to 3. Shri Sunil Otwani, counsel for respondent No.4. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of the order dated 18.10.2002 (Annexure P-1) passed by the prescribed authority Sub Divisional Officer, Raigarh in case No.181/B-121/2001-02 whereby the petitioner was removed from the post of Sarpanch. The petitioner has also questioned the appellate order dated 3.2.2003 passed by the Collector. The petitioner's petition is that she was elected as Sarpanch, Gram Panchayat: Darramuda, Block: Pussour, District: Raigarh. As some complaint was filed by the villagers of Villages: Gudgahan and Darramuda against the petitioner, action was taken by the Sub Divisional Officer, Raigarh, and he directed the Chief Executive Officer, Raigarh to conduct enquiry and submit the report. Thereafter, the Chief Executive Officer submitted his report and on that show cause notice was issued to the petitioner on which reply was filed by the petitioner. The petitioner filed reply denying the allegations made in the complaint in which she had mentioned that money was legally spent. The petitioner had also adduced evidence in support of her case. However, the S.D.O. held the petitioner guilty for the misconduct and passed the impugned order against which the petitioner had filed appeal before the Collector, however, the same was dismissed. Even the petitioner had filed a revision	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

against the order of the Collector before the Revenue Board and during the pendency of the revision, she preferred this writ petition. The ground taken in this petition for quashment of the impugned orders is that no sufficient opportunity for showing cause to the petitioner was granted and no charge of misconduct was proved against the petitioner. Therefore, it is prayed that the impugned orders be quashed.

Return has been filed on behalf of respondents No.1 to 3 in which they have denied the allegations of the petitioner.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that the impugned order suffers from illegality for the reason that the petitioner was not given sufficient opportunity to cross-examine the witnesses. Therefore, the impugned order be quashed.

On the other hand, learned Govt. Advocate appearing on behalf of respondents No.1 to 3 argued that against the order of the Collector, the petitioner had already preferred revision and during the pendency of the revision the petitioner was not entitled to file this instant writ petition. He further argued that the S.D.O. passed the impugned order after following the procedure envisaged under the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Act').

As far as the question of filing of revision against the order of the Collector is concerned, it is true that revision was filed by the petitioner before the Board of Revenue, which is evident from the document Annexure P-5 filed, by the petitioner. However, in that order it has been mentioned that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

till the notification is issued by the Government the Revenue Board has no jurisdiction to hear the revision under the Act. Therefore, in the given situation, the petitioner was forced to file this writ petition. Even otherwise, the petitioner has raised in this petition the question of violation of principles of natural justice. Therefore, I am of the considered opinion that the objection raised by the learned counsel for respondents No.1 to 3 is not tenable.

Now coming to the question of propriety of the enquiry, proviso to Section 40 of the Act envisages that "no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office". Perusal of order sheets of the proceedings before the S.D.O. reveals that after receiving the report show cause notice was issued to the petitioner to which the petitioner filed reply, thereafter the matter was fixed for evidence of the petitioner, the petitioner was allowed to adduced evidence and in support of her case the petitioner adduced the evidence. Thereafter, the matter was fixed for the evidence of Panchayat and Social Educational Organization and on 28.6.2002, the evidence of the Organization was recorded, but that remained incomplete on account of expiry of the Court's time and it was mentioned that the statement remained incomplete, therefore, the date was extended. Thereafter, for one or the other reason, the matter was adjourned and that statement remained incomplete. However, on 18.10.2002 without completing the evidence and giving opportunity to the petitioner to cross-examine that witness, the order was passed. Perusal of the proceedings

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dated 18.10.2002 does not even reflect that the impugned order was passed after hearing the parties.

Therefore, I am of the considered opinion that the impugned order passed by the S.D.O. suffers from vice of arbitrariness and violation of principles of natural justice for the reason that the petitioner was not allowed to cross-examine the witness of Panchayat and Social Educational Organization and that too without hearing the parties. Therefore, on this ground only, the orders passed by the S.D.O. and the Collector require to be quashed.

In the result, the petition is allowed and the impugned order dated 18.10.2002 passed by the S.D.O. and appellate order dated 3.2.2003 passed by the Collector, Raigarh, are quashed.

Parties are left to bear their own cost.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

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